JUDGMENT OF ACQUITTAL – Speedy ruling required.....Revised 3/2010

The court's decision on a defendant's motion for a judgment of acquittal "shall not be reserved, but shall be made with all possible speed." Rule 20(a), Ariz. R. Crim. P. The defendant must then decide whether or not to present a defense. The defendant should not be forced to make his decision in ignorance of the sufficiency of the State's case. *See* Comment to Rule 20(a). In *State v. Blackhoop*, 158 Ariz. 472, 474, 763 P.2d 536, 538 (App. 1988), *vacated on other grounds*, 162 Ariz. 121, 781 P.2d 599 (1989), the defendant was charged with sexual assault; the defendant claimed the victim consented. At trial, the victim testified only that the defendant had put "something" in her mouth. At the end of the State's case, the trial court denied the defense's motion for judgment of acquittal, asserting that although the State had not provided sufficient evidence of penetration, and because the defense was consent, "the defendant would, of necessity, provide this element in presenting the defense of consent." The Court of Appeals noted that "[t]his act of waiting for the defense to supply a necessary element of the state's case amounts to a 'reservation' of decision on the motion for judgment of acquittal, which is clearly prohibited by Rule 20(a), even though the trial court formally denied the motion." *Id.*; *see also State v. Tucker*, 26 Ariz.App. 376, 378, 548 P.2d 1188, 1190 (App. 1976) (the purpose of Rule 20 is to avoid forcing a defendant into going forward with his own evidence when the state's case is insufficient, thus risking convicting himself).

Compare State v. Dickens, 187 Ariz. 1, 11, 926 P.2d 468, 478 (1996), *cert. denied sub nom. Dickens v. Arizona,* 522 U.S. 920 (1997). In *Dickens*, after the State had rested, the defendant moved for a judgment of acquittal; after hearing extensive

argument, the trial court took the matter under advisement. The defense did not object to the court's doing so. Before the trial court ruled on the motion, the State asked to reopen its case so that a codefendant could testify. The trial court granted the motion to reopen. On appeal, the defendant argued that the trial court's delay in ruling on the motion for judgment of acquittal violated Rule 20 and prejudiced him. The Arizona Supreme Court, citing *State v. Villegas*, 101 Ariz. 465, 467, 420 P.2d 940, 942 (1966), recognized that a judge's reservation of a ruling on a Rule 20 motion may be reversible error. Nevertheless, the Court found that the "all possible speed" provision of the rule was not violated:

> [T]he purpose of requiring a prompt ruling on the motion is to ensure that the defendant is not forced into a premature election of resting or going forward with evidence. But Defendant was not forced to elect whether to rest or go forward with his case. He had an opportunity to renew his Rule 20 motion after the state called [the codefendant] and before he presented his own case. Because the judge did not force Defendant to go forward with his case or rest, we find no error in the judge's failure to rule on Defendant's Rule 20 motion before recessing or prior to ruling on the state's motion to reopen.

Dickens, 187 Ariz. at 12, 926 P.2d at 479.

The Court also noted that Dickens had failed to object to the trial court's delay in ruling on the Rule 20 motion and had thus waived his objection to the delay. *Id. citing State v. James*, 175 Ariz. 478, 857 P.2d 1332 (App. 1993). In *James,* the Court of Appeals held that by failing to object to the delay, the defendant waived any objection to the trial court's delay in ruling on a motion for judgment of acquittal:

> At the close of the state's case, the trial court obliquely noted before the jury "a motion made at this time by the defense, and giving it full force and effect, the argument to be made at a later time." The trial court did not rule on the motion until after appellant had presented his defense and the jury had begun deliberations. Noting that Rule 20 motions are intended to be ruled on expeditiously so that a defendant is not forced to present his case

> when the state's case is insufficient, [citation omitted], appellant claims he was prejudiced. Having failed to object or to request a timely ruling, however, he has waived the issue on appeal.

James, 175 Ariz. at 478, 857 P.2d at 1332.